



1. Does the Board have jurisdiction to review the preliminary hearing Order?
2. If so, is claimant entitled to receive the temporary total disability benefits and medical benefits ordered?

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record compiled to date, the Board finds and concludes:

The issues raised by respondent and its insurance carrier in this appeal are not subject to review from a preliminary hearing order. Accordingly, this appeal should be dismissed.

This is an appeal from a preliminary hearing order. Consequently, the Board's jurisdiction to review preliminary hearing findings is limited. At this stage of the claim, not every alleged error is subject to review. Generally, the Board can review preliminary hearing orders in which an administrative law judge has exceeded his or her jurisdiction.<sup>1</sup> Moreover, the Board has specific authority to review the preliminary hearing issues listed in K.S.A. 44-534a, which are:

- (1) whether the worker sustained an accidental injury,
- (2) whether the injury arose out of and in the course of employment,
- (3) whether the worker provided the employer with timely notice and with timely written claim, and
- (4) whether certain other defenses apply.

The term "certain defenses" refers to defenses that dispute the compensability of the injury under the Workers Compensation Act.<sup>2</sup>

The issues of whether a worker needs ongoing medical treatment or whether the worker satisfies the definition of being temporarily and totally disabled are not jurisdictional issues listed in K.S.A. 44-534a that are subject to review from a preliminary hearing order. Those issues do, however, comprise questions of law and fact over which an administrative law judge has the jurisdiction to determine at a preliminary hearing.

Jurisdiction is defined as the power of a court to hear and decide a matter. The test of jurisdiction is not a correct decision but a right to enter upon inquiry and make a

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<sup>1</sup> K.S.A. 2002 Supp. 44-551(b)(2)(A).

<sup>2</sup> *Carpenter v. National Filter Service*, 26 Kan. App. 2d 672, 994 P.2d 641 (1999).

decision. Jurisdiction is not limited to the power to decide a case rightly, but includes the power to decide it wrongly.<sup>3</sup>

Respondent and its insurance carrier's argument that the Judge exceeded his jurisdiction by awarding temporary total disability benefits without medical evidence is without merit. Temporary total disability benefits can be awarded on claimant's testimony alone.<sup>4</sup> In this instance, claimant testified as to his present condition, what treatment he had undergone, and his failed attempts to return to work. The record also contains numerous medical records regarding claimant's treatment and his medical condition, including Dr. Prostic's April 16, 2003 medical report that states claimant is "temporarily totally disabled from gainful employment."

Likewise, respondent and its insurance carrier's argument that the Judge lacked jurisdiction to appoint a specific doctor to treat claimant is also without merit. At a preliminary hearing, the Judge has the authority to determine whether an employer and its insurance carrier have failed or neglected to provide appropriate medical treatment and, if so, the Judge may appoint a doctor to provide such treatment. In those instances, the issue is not whether there should be a change of physician. Instead, the issue is whether claimant is entitled to receive medical treatment.

Respondent and its insurance carrier cited the Board's *Chilargi*<sup>5</sup> decision to support their argument that the Judge exceeded his authority by failing to allow respondent and its insurance carrier the opportunity to list three physicians from which claimant would select a treating doctor. The *Chilargi* decision is distinguishable as the employer and its insurance carrier were providing claimant with medical treatment at the time of the preliminary hearing. Accordingly, *Chilargi* was a change-of-physician case as opposed to this claim where respondent and its insurance carrier were refusing to provide claimant with treatment.

As provided by the Act, preliminary hearing findings are not final but subject to modification upon a full hearing of the claim.<sup>6</sup>

**WHEREFORE**, the Board dismisses respondent and its insurance carrier's appeal.

**IT IS SO ORDERED.**

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<sup>3</sup> *Allen v. Craig*, 1 Kan. App. 2d 301, 303-304, 564 P.2d 552, *rev. denied* 221 Kan. 757 (1977).

<sup>4</sup> See *Overstreet v. Mid-West Conveyor Co., Inc.*, 26 Kan. App. 2d 586, 587, 994 P.2d 639 (1999).

<sup>5</sup> *Chilargi v. W. H. Braums, Inc.*, No. 198,309, 1996 WL 384434 (Kan. WCAB June 24, 1996).

<sup>6</sup> K.S.A. 44-534a.

Dated this \_\_\_\_ day of June 2003.

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BOARD MEMBER

c: William L. Phalen, Attorney for Claimant  
Richard J. Liby, Attorney for Respondent and its Insurance Carrier  
Jon L. Frobish, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director